

SECOND REGULAR SESSION

# SENATE BILL NO. 611

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3651S.031

## AN ACT

To repeal sections 523.040 and 523.205, RSMo, and to enact in lieu thereof nine new sections relating to eminent domain, with a contingent effective date.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 523.040 and 523.205, RSMo, are repealed and nine  
2 new sections enacted in lieu thereof, to be known as sections 523.012, 523.025,  
3 523.035, 523.040, 523.094, 523.110, 523.120, 523.125, and 523.205, to read as  
4 follows:

**523.012. The state or any political subdivision thereof shall set  
2 forth in writing a general description of the project it intends to  
3 complete that requires the use of eminent domain before proceeding  
4 with the condemnation of property. The description of the project shall  
5 include its intended benefit to the public, an explanation of if or how  
6 the public will use the condemned property, the estimated costs, the  
7 anticipated sources of funds, the anticipated date of the retirement of  
8 obligations incurred to finance the project, and the plan for providing  
9 relocation assistance as required by section 523.205.**

**523.025. Notwithstanding any other provision of law to the  
2 contrary, no political subdivision shall exercise the power of eminent  
3 domain or condemnation until the governing body approves of the  
4 proposed condemnation by a two-thirds majority vote.**

**523.035. 1. After the petition has been filed under section  
2 523.030, the court shall, prior to appointing commissioners under  
3 section 523.040, determine whether or not:**

**4 (1) The condemning entity has the authority to exercise the**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

5 **power of eminent domain;**

6 (2) **The property sought to be condemned is subject to the**  
7 **exercise of eminent domain;**

8 (3) **The property sought to be condemned is for a public use; and**

9 (4) **The condemning entity is properly exercising the power of**  
10 **eminent domain in the particular proceeding.**

11 **The court may also determine any other issues raised by the owner of**  
12 **the property which attacks the validity of the condemning entity's right**  
13 **to exercise eminent domain over the owner's property.**

14 2. **If the court determines that the condemning entity has**  
15 **satisfied all the requirements of subsection 1 of this section, the court**  
16 **shall enter an interlocutory order to such effect. An interlocutory**  
17 **appeal shall lie from the decision as a matter of right.**

18 3. **If the court determines that the condemning entity has not**  
19 **satisfied all the requirements of subsection 1 of this section and does**  
20 **not have the authority to exercise the power of eminent domain in this**  
21 **particular proceeding, the court shall dismiss the condemning entity's**  
22 **petition with prejudice and direct the condemning entity to pay the**  
23 **owner's court costs and attorneys' fees.**

24 4. **The appeal provided for in subsection 2 of this section shall**  
25 **be an interlocutory appeal, filed in the appropriate district of the**  
26 **Missouri court of appeals. Notice of such interlocutory appeal shall be**  
27 **filed within three days of the entry of the order of trial court; the time**  
28 **limits applicable to such appeal shall be the same as in interlocutory**  
29 **appeals allowed to the state in criminal cases.**

523.040. The court, or judge thereof in vacation, on being satisfied that  
2 due notice of the pendency of the petition has been given, shall appoint three  
3 disinterested commissioners, who shall be residents of the county in which the  
4 real estate or a part thereof is situated[, to]. **The Missouri supreme court**  
5 **shall promulgate rules to establish uniform instructions to be given to**  
6 **commissioners regarding the scope and nature of their duties when**  
7 **determining the amount of compensation an owner is to receive for his**  
8 **or her condemned property. The commissioners** assess the damages which  
9 the owners may severally sustain by reason of such appropriation, who, after  
10 having viewed the property, shall return to the clerk of such court, under oath,  
11 their report in duplicate, of such assessment of damages, setting forth the amount  
12 of damages allowed to the person or persons named as owning or claiming the

13 tract of land condemned, and should more than one tract be condemned in the  
14 petition, then the damages allowed to the owner, owners, claimant or claimants  
15 of each tract, respectively, shall be stated separately, together with a specific  
16 description of the tracts for which such damages are assessed; and the clerk shall  
17 file one copy of said report in his office and record the same in the order book of  
18 the court, and he shall deliver the other copy, duly certified by him, to the  
19 recorder of deeds of the county where the land lies (or to the recorder of deeds of  
20 the city of St. Louis, if the land lies in said city) who shall record the same in his  
21 office, and index each tract separately as provided in section 59.440, RSMo, and  
22 the fee for so recording shall be taxed by the clerk as costs in the proceedings;  
23 and thereupon such company shall pay to the clerk the amount thus assessed for  
24 the party in whose favor such damages have been assessed; and on making such  
25 payment it shall be lawful for such company to hold the interest in the property  
26 so appropriated for the uses prescribed in this section; and upon failure to pay  
27 the assessment, the court may, upon motion and notice by the party entitled to  
28 such damages, enforce the payment of the same by execution, unless the said  
29 company shall, within ten days from the return of such assessment, elect to  
30 abandon the proposed appropriation of any parcel of land, by an instrument in  
31 writing to that effect, to be filed with the clerk of the court, and entered on the  
32 minutes of the court, and as to so much as is thus abandoned, the assessment of  
33 damages shall be void.

**523.094. The state or any political subdivision thereof shall not  
2 exercise the power of eminent domain to acquire property for the  
3 purpose of economic development. For the purpose of this section,  
4 "economic development" means any activity performed to increase tax  
5 revenue, tax base, employment rates, or general economic health, when  
6 the activity does not result in the transfer of property to:**

- 7 (1) Public ownership;
- 8 (2) A private entity that is a common carrier;
- 9 (3) A public utility, rural electric cooperative, or municipally-  
10 owned utility.

**523.110. When any entity with condemnation authority negotiates  
2 with a property owner to acquire any property interest which may  
3 eventually be acquired through formal eminent domain proceedings,  
4 the condemning entity shall provide the owner of the property a form  
5 containing a written summary of the rights of an owner of property to**

6 be acquired under this chapter via certified mail return receipt  
7 requested. If the condemning entity does not supply the owner of the  
8 real property with this form, a presumption shall exist that any sale or  
9 contract entered into between the condemning entity and the owner  
10 was not voluntary and the condemning entity may be held responsible  
11 for any relief, if any, as the court may determine to be appropriate  
12 considering all of the facts and circumstances, including, but not  
13 limited to, an award of punitive damages.

523.120. 1. Before proceeding to acquire any property interest  
2 by condemnation, a condemning entity must give notice of such intent,  
3 together with a description of the property interest to be acquired,  
4 notice of the property owners' right to a hearing, and notice that the  
5 decision determined at that hearing may be appealed, to be heard by  
6 a jury of peers, to anyone having an interest of record in the property  
7 involved. Such notice shall advise that the condemning authority shall  
8 pay the reasonable costs of an appraisal pursuant to subsection 2 of  
9 this section. Such notice, however, need not be given to any of such  
10 persons who cannot be found by the condemning authority upon the  
11 exercise of due diligence. Upon receipt of such notice, such persons  
12 may employ an appraiser of their choosing to appraise the property  
13 interest to be acquired. Such appraisal shall be made using sound, fair,  
14 and recognized appraisal practices which are consistent with law, and  
15 which shall consider, but are not limited to the following factors:

- 16 (1) Comparable sales in the area;
- 17 (2) Appraisal value of like property in the area;
- 18 (3) Term of ownership of property by current owner;
- 19 (4) Current use of property and future use of property;
- 20 (5) Availability of like property in the area;
- 21 (6) Anticipated financial gain from proposed future use.

22 The value of the land or property actually taken shall be equal to the  
23 fair market value with upward adjustments for the factors listed in  
24 subdivisions (1) to (6) of this subsection. Within ninety days of the date  
25 of such notice, such persons may submit to the condemning authority  
26 a copy of such appraisal. The condemning authority shall, immediately  
27 upon receipt thereof, submit to such persons copies of its appraisals. If  
28 the property interest is being acquired in relation to a federal aid  
29 project, the appraisals submitted by the condemning authority shall be

30 those which have been approved by it pursuant to applicable statutes  
31 and regulations, if such approval is required. All such appraisals may  
32 be used by the parties to negotiate in good faith for the acquisition of  
33 the property interest, but only the condemning authority shall be  
34 bound by such appraisals.

35 2. If an appraisal is submitted to the condemning entity in  
36 accordance with the provisions of subsection 1 of this section, the  
37 condemning entity shall pay the reasonable costs of such appraisal. If  
38 more than one person is interested in the property sought to be  
39 acquired and such persons cannot agree on an appraisal to be  
40 submitted under subsection 1 of this section, the condemning entity  
41 shall be relieved of any obligation imposed upon it to pay for such  
42 appraisals as may be submitted to it pursuant to this section.

43 3. Nothing in this section shall be construed as limiting in any  
44 way the obligation of the condemning entity to negotiate in good faith  
45 for the acquisition of any property interest sought prior to instituting  
46 eminent domain proceedings or as limiting in any way the discovery  
47 rights of parties to eminent domain proceedings.

48 4. Nothing in this section shall prevent the condemning entity  
49 from complying with federal and state requirements to qualify the  
50 authority for federal aid grants.

51 5. A condemning entity shall not make an offer to purchase the  
52 property or property interest that is less than the fair market value the  
53 condemning entity has established for the property or property interest  
54 pursuant to the appraisal required in subsection 1 of this section. A  
55 condemning entity need not make an offer in excess of that amount in  
56 order to satisfy the requirement to negotiate in good faith.

57 6. No later than ten days before the formal filing of a petition  
58 under section 523.010, the condemning entity must make a written offer  
59 to purchase the desired property or property interest.

60 7. Upon submitting an offer complying with the requirements of  
61 subsection 6 of this section, the condemning entity shall file a copy of  
62 such offer in the office of the recorder of deeds in the county in which  
63 the property or property interest is located on the same day as which  
64 it submits such offer to the condemnee.

65 8. If the condemning entity and the condemnee fail to reach  
66 agreement and the action proceeds to trial before a commissioner, as

67 provided by section 523.040, or before a jury, and the amount of  
68 damages awarded the condemnee by the judgment, exclusive of interest  
69 and costs, is twenty-five percent greater than the amount specified in  
70 the offer made under subsection 6 of this section, the court shall order  
71 the condemning entity to pay the condemnee's attorney's fees and court  
72 costs.

523.125. If any condemnor fails to initiate construction,  
2 improvement, or otherwise fails to utilize the condemned property for  
3 the stated public use within forty-eight months of its acquisition, the  
4 former owner of the property or a beneficiary or an heir, if a  
5 beneficiary or heir has been designated for this purpose, shall have the  
6 right of first refusal to reacquire the property for the compensated  
7 amount or the fair market value of the property, whichever is less. The  
8 provisions of this section shall not apply to the state highways and  
9 transportation commission. The state highways and transportation  
10 commission shall be governed by the timeframe delineated in section  
11 226.297, RSMo.

523.205. 1. Any public agency as defined in section 523.200 which is  
2 required, as a condition to the receipt of federal funds, to give relocation  
3 assistance to any displaced person is hereby authorized and directed to give  
4 similar relocation assistance to displaced persons when the property involved is  
5 being acquired for the same public purpose through the same procedures, and is  
6 being purchased solely through expenditure of state or local funds.

7 2. The governing body of any city, or agency thereof, prior to approval of  
8 a plan, project or area for redevelopment under the operation of chapter 99,  
9 RSMo, chapter 100, RSMo, or chapter 353, RSMo, **or any other political**  
10 **subdivision initiating condemnation proceedings**, which proposes or  
11 includes within its provisions or necessitates displacement of persons, when such  
12 displacement is not subject to the provisions of the Federal Uniform Relocation  
13 and Real Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to  
14 4655, as amended) or subsection 1 of this section, shall establish by ordinance or  
15 rule a relocation policy which shall include, but not be limited to, the provisions  
16 and requirements of subsections 2 to 15 of this section, or in lieu thereof, such  
17 relocation policy shall contain provisions and requirements which are equivalent  
18 to the requirements of the Federal Uniform Relocation Assistance and Real  
19 Property Acquisition Policies Act of 1970 (42 U.S.C. sections 4601 to 4655, as

20 amended).

21 3. As used in this section, the following terms shall mean:

22 (1) "Business", any lawful activity that is conducted:

23 (a) Primarily for the purchase, sale or use of personal or real property or  
24 for the manufacture, processing or marketing of products or commodities; or

25 (b) Primarily for the sale of services to the public;

26 (2) "Decent, safe and sanitary dwelling", a dwelling which meets  
27 applicable housing and occupancy codes. The dwelling shall:

28 (a) Be structurally sound, weathertight and in good repair;

29 (b) Contain a safe electrical system;

30 (c) Contain an adequate heating system;

31 (d) Be adequate in size with respect to the number of rooms needed to  
32 accommodate the displaced person; and

33 (e) For a handicapped person, be free of any barriers which would  
34 preclude reasonable ingress, egress or use of the dwelling;

35 (3) "Handicapped person", any person who is deaf, legally blind or  
36 orthopedically disabled to the extent that acquisition of another residence  
37 presents a greater burden than other persons would encounter or to the extent  
38 that modifications to the replacement residence would be necessary;

39 (4) "Initiation of negotiations", the delivery of the initial written offer of  
40 just compensation by the acquiring entity, to the owner of the real property, to  
41 purchase such real property for the project, or the notice to the person that he  
42 will be displaced by rehabilitation or demolition;

43 (5) "Person", any individual, family, partnership, corporation, or  
44 association.

45 4. Every urban redevelopment corporation acquiring property within a  
46 redevelopment area shall submit a relocation plan as part of the redevelopment  
47 plan.

48 5. Unless the property acquisition under the operation of chapter 99,  
49 RSMo, chapter 100, RSMo, or chapter 353, RSMo, is subject to federal relocation  
50 standards or subsection 1 of this section, the relocation plan shall provide for the  
51 following:

52 (1) Payments to all eligible displaced persons, as defined, who occupied  
53 the property to be acquired for not less than ninety days prior to the initiation of  
54 negotiations who are required to vacate the premises;

55 (2) A program for identifying special needs of displaced persons with

56 specific consideration given to income, age, size of family, nature of business,  
57 availability of suitable replacement facilities and vacancy rates of affordable  
58 facilities;

59 (3) A program for referrals of displaced persons with provisions for a  
60 minimum of three decent, safe and sanitary housing referrals for residential  
61 persons or suitable referral sites for displaced businesses, a minimum of ninety  
62 days' notice of referral sites for handicapped displaced persons and sixty days'  
63 notice of referral sites for all other displaced persons prior to the date such  
64 displaced persons are required to vacate the premises, and arrangements for  
65 transportation to inspect referral sites; and

66 (4) Every displaced person shall be given a ninety-day notice to vacate,  
67 prior to the date such displaced person is required to vacate the premises.

68 6. All displaced residential persons eligible for payments shall be provided  
69 with relocation payments based upon one of the following, at the option of the  
70 person:

71 (1) A five-hundred-dollar fixed payment; or

72 (2) Actual reasonable costs of relocation including actual moving costs,  
73 utility deposits, key deposits, storage of personal property up to one month,  
74 utility transfer and connection fees and other initial rehousing deposits including  
75 first and last month's rent and security deposit.

76 7. All displaced businesses eligible for payments shall be provided with  
77 relocation payments based upon the following, at the option of the business:

78 (1) A one-thousand-five-hundred-dollar fixed payment; or

79 (2) Actual costs of moving including costs for packing, crating,  
80 disconnection, dismantling, reassembling and installing all personal equipment  
81 and costs for relettering similar signs and similar replacement stationery.

82 8. If a displaced person demonstrates the need for an advance relocation  
83 payment, in order to avoid or reduce a hardship, the developer or public agency  
84 shall issue the payment subject to such safeguards as are appropriate to ensure  
85 that the objective of the payment is accomplished. Payment for a satisfactory  
86 claim shall be made within thirty days following receipt of sufficient  
87 documentation to support the claim. All claims for relocation payment shall be  
88 filed with the displacing agency within six months after:

89 (1) For tenants, the date of displacement;

90 (2) For owners, the date of displacement or the final payment for the  
91 acquisition of the real property, whichever is later.

92           9. Any displaced person, who is also the owner of the premises, may waive  
93 relocation payments as part of the negotiations for acquisition of the interest held  
94 by such person. Such waiver shall be in writing, shall disclose the person's  
95 knowledge of the provisions of this section and his entitlement to payment and  
96 shall be filed with the acquiring public agency.

97           10. All persons eligible for relocation benefits shall be notified in writing  
98 of the availability of such relocation payments and assistance, with such notice  
99 to be given concurrently with the notice of referral sites as required in  
100 subdivision (3) of subsection 5 of this section.

101           11. Any urban redevelopment corporation, its assigns or transferees,  
102 which have been provided any assistance under the operation of chapter 99,  
103 RSMo, chapter 100, RSMo, chapter 353, RSMo, or this chapter, with land  
104 acquisition by the local governing body, shall be required to make a report to the  
105 local governing body or appropriate public agency which shall include, but not be  
106 limited to, the addresses of all occupied residential buildings and structures  
107 within the redevelopment area and the names and addresses of persons displaced  
108 by the redeveloper and specific relocation benefits provided to each person, as  
109 well as a sample notice provided to each person.

110           12. An urban redevelopment corporation which fails to comply with the  
111 relocation requirements provided in this section shall not be eligible for tax  
112 abatement as provided for in chapter 353, RSMo.

113           13. The requirements set out in this section shall be considered minimum  
114 standards. In reviewing any proposed relocation plan under the operation of  
115 chapter 99, RSMo, chapter 100, RSMo, or chapter 353, RSMo, the local governing  
116 body or public agency shall determine the adequacy of the proposal and may  
117 require additional elements to be provided.

118           14. Relocation assistance shall not be provided to any person who  
119 purposely resides or locates his business in a redevelopment area solely for the  
120 purpose of obtaining relocation benefits.

121           15. The provisions of sections 523.200 and 523.205 shall apply to land  
122 acquisitions under the operation of chapter 99, RSMo, chapter 100, RSMo, or  
123 chapter 353, RSMo, filed for approval, approved or amended on or after August  
124 31, 1991, **or any other land acquisition obtained under the provisions of**  
125 **this chapter.**

          Section B. The enactment of section 523.094 of this act shall become  
2 effective only upon approval by the voters of an amendment to section 26 of

3 article I of the Constitution of Missouri that provides that private property may  
4 only be taken when necessary for the possession, occupation, or enjoyment of land  
5 by the public, or by public agencies, utilities, or common carriers, and upon  
6 approval by the voters of an amendment to repeal section 21 of article VI of the  
7 Constitution of Missouri.

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Unofficial

Bill

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